



# DEPARTMENT OF PUBLIC ADVOCACY

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**To:** Justices, Kentucky Supreme Court

**From:** Timothy G. Arnold, Post-Trial Division Director

**Re:** Comments on Proposed FCRPP 44

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The Kentucky Department of Public Advocacy (DPA) submits the following comments to the proposed FCRPP 44:

**Kentucky Continues to Struggle with the Problem of Over-Institutionalization of Status Offenders:** As the Kentucky Court of Appeals recently cautioned in a published opinion concerning the illegal detention of a status offender, “a family and child in trouble should not be further torn apart by the system that is in place to provide stability and reunification.”<sup>1</sup> Despite numerous legislative provisions in place to discourage the use of secure detention of status offenders pursuant to the Valid Court order (VCO) exception<sup>2</sup> and to eliminate the illegal use of secure detention of status offenders<sup>3</sup>, according to one report delivered at during the KBA Conference, Kentucky had the highest rate of detention for status offenders of any state currently accepting money under the Juvenile Justice and Delinquency Prevention Act.

**The Department Supports the Adoption of Strong Family Court Rules to help Reduce the Institutionalization of Status Offenders:** The Kentucky’s Unified Juvenile Code explicitly states that the purpose of the status offender chapter is to assist families in solving the problem for which they have been referred by addressing their individual needs with all of the Commonwealth’s efforts and available resources.<sup>4</sup> In short, the legislature has recognized that the behaviors which define status offenses (*i.e.* excessive absenteeism from school; running away from home; or repeated misbehavior at home or school) are merely symptoms of a greater problem. The lack of clear, consistent guidelines for how status offender cases are to be handled contributes to a lack of fair process and sound resolutions with these kids. As noted previously, the recent Court of Appeals

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<sup>1</sup> *A.C. v. Commonwealth*, \_\_\_ S.W.3d \_\_\_, 2010 WL 2218655 (Ky.App. 2010).

<sup>2</sup> KRS 600.020(61); KRS 610.010(11); KRS 610.265(d); KRS 630.070; KRS 630.080.

<sup>3</sup> KRS 610.265; KRS 630.100.

<sup>4</sup> See KRS 630.010(1) and (2).

decision in *A.C. v. Commonwealth*<sup>5</sup> is instructive, in that it clearly demonstrates the harm which can befall a child when a trial court lacks the guidance which can be provided by effective court rules. The General Assembly has made it very plain that it will not interfere with the Court of Justice's inherent authority to hold a litigant, even a status offender, in contempt of court.<sup>6</sup> The Court of Justice's proposed rules begin the process of providing the needed guidance.

**The Proposed Forms Will Significantly Improve the Quality of Information Being Provided to the Family Court:** "The purpose of juvenile proceedings is to assist the child and the family."<sup>7</sup> Accordingly, information that would assist the courts in accurately identifying the causes of status offense behaviors will also serve to assist the courts in referring children and families to appropriate services and resources. The Department of Public Advocacy supports the proposed adoption of a number of forms pertaining to Status Offenders. Information required by these forms will provide more insight and understanding into the causes of the behavior of individual status offenders. By requiring this high level of relevant information to be filed with petitions alleging status offense behaviors, Judges and other court personnel will be in a better position to address the individual needs of the child and his or her family. The proposed forms will serve as an invaluable tool for the courts, families and schools who are working together to address these status behaviors.

**The Department Proposes that FCRPP 44 be Amended to Be Closer to the Version Proposed by the Status Offender Subcommittee:** The DPA suggests the following amendments to FCRPP 44 –which are intended to clarify for the lower courts the bounds of their authority to order the secure detention of status offenders. .

**DPA's proposed amendment to FRCPP 44 Detention of Status Offenders:**

1. Pursuant to KRS 610.265, no status offender shall be retained in secure detention after a detention hearing unless:
  - a) ~~The offender is alleged to be an habitual runaway; or,~~ The offender is alleged to be in contempt of a valid court order entered on AOC-JV-36, Juvenile Status Offender Order and a court authorized pick-up order has been activated;  
or
  - b) A finding of contempt of court has been entered in a formal court proceeding and a valid court order has been entered

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<sup>5</sup> *A.C. v. Commonwealth*, \_\_\_ S.W.3d \_\_\_, 2010 WL 2218655 (Ky.App. 2010).

<sup>6</sup> See KRS 600.060

<sup>7</sup> *A.C. v. Commonwealth*, \_\_\_ S.W.3d \_\_\_, 2010 WL 2218655 (Ky.App. 2010).

on AOC-JV-36, Juvenile Status Offender Order.

- c) The child is being held pursuant to KRS Chapter 615.
2. Any status offender appearing before the court shall be provided a public advocate or shall be provided the opportunity to retain private counsel.
3. The following procedures shall be utilized to facilitate the timely release of a child in detention to non-secure alternatives:
  - a) Release to the child's parents or legal guardians shall be contacted and the child released to their care;
  - b) Release to the state child protective service agency if the child is committed to that agency;
  - c) Release to the state juvenile justice agency for alternatives detention services, if the child qualifies for such a placement; or
  - d) Release to a non-secure crisis or other mental health unit/facility.
4. If the parents or legal guardians are unavailable or unwilling to accept the child and there is no other alternative under Section 3. above:
  - a) Another responsible adult relative or other interested adult with an established relationship with the child, including the person who may have been exercising custodial control or supervision but does not have actual legal custody, shall be contacted as directed by the presiding judge and the child released to his/her care; or
  - b) The child shall be placed in an alternative placement, with possible referral to the state child protective service agency.
5. No child shall be detained for more than twenty-four (24) hours in secure detention without a hearing before the court within that twenty-four (24) hour period of the detainment, exclusive of weekends and holidays. Each court shall establish a local protocol to assure that the hearing is scheduled within twenty-four (24) hours, exclusive of weekends and holidays.

6. A finding of contempt shall only be based upon violation of a Valid Court Order as defined in KRS 600.020(61), which was issued during a previous hearing before the family or district court.
7. A judge shall conduct a due process hearing prior to finding a child in contempt. Prior to detaining a child in a secure detention facility for contempt, the judge shall consider whether less restrictive alternatives under subsections 3. and 4. above are available or appropriate and consider any other alternatives identified in agency reports submitted within 48 hours pursuant to KRS 610.265(3)(d)(3). If the court has determined by findings on the record that no less restrictive alternatives are available, then the child may be securely detained. Any such court order shall indicate the length of detainment.

The proposed amendments suggested above serve two purposes. First, the amendment will clarify confusing language in the original proposal regarding the secure detention of habitual runaways. Second, the revision will clarify the limits of the courts' power to securely detain a status offender pursuant to the VCO exception. Indeed, the proposed amendments to FRCPP 42 and FRCPP 44 were taken largely from a working document produced by the Status Offender Subcommittee convened in 2009 for the purpose of submitting proposed uniform rules to this Court for consideration.

As noted, the current version of FRCPP 44 is contrary to law, in that it appears to permit a judge to order a habitual runaway into secure detention, even if that runaway is not being held pursuant to the Interstate Compact on Juveniles. Habitual runaways are the only status offenders who may be arrested purely on the allegation of a status offense,<sup>8</sup> and with the approval of the Court Designated Worker, they may be placed in secure detention until a detention hearing.<sup>9</sup> However, the court has no authority to order them into secure detention unless they are being transported to another jurisdiction.<sup>10</sup> The proposed amendments clarify those requirements, and ensure that Kentucky runaways are not securely detained contrary to statute.

In addition, the proposed amendments to FCRPP 44 establish some procedural regularity to contempt proceedings, ensuring that procedures envisioned by the General Assembly are consistently implemented throughout Kentucky.

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<sup>8</sup> KRS 630.030(2).

<sup>9</sup> KRS 630.040(2), (3).

<sup>10</sup> KRS 630.100, 630.080(2).

Finally, the proposed amendments are intended to prevent future illegal orders for the secure detention of status offenders by ensuring that all the necessary prerequisites have been met and all less restrictive alternatives have been considered. Kentucky's Unified Juvenile Code makes clear that the use of secure detention for status offenders who have violated valid court orders was intended to be an exception – not the rule. In order for our court rules to reflect this intent, each and every step that a judge must take in order to securely detain a status offender should be set forth in detail, so that there are no missteps, no oversights and no misunderstandings that could lead to future incidences of illegal secure detention of status offenders.

The proposed Status Offender rules will have a significant and beneficial effect on the treatment of juvenile status offenders, particularly if the DPA proposed changes are adopted as well. DPA urges this Court to adopt the proposed rules, and to modify them as proposed above in our comment to FCRPP 42. If the Court has any questions about the Department's position on this issue, please feel free to contact me by email at [tim.arnold@ky.gov](mailto:tim.arnold@ky.gov), or by phone at (502) 564-8006.